

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>ROBERT AND DENISE SCHNEIDER</b>	:	DETERMINATION
	:	DTA NO. 818739
for Redetermination of a Deficiency or for Refund of	:	
New York State and New York City Personal Income	:	
Taxes under Article 22 of the Tax Law and the New York	:	
City Administrative Code for the Years 1995 and 1996.	:	

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Petitioners, Robert and Denise Schneider, 301 East 48<sup>th</sup> Street, New York, New York 10017, filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law and the New York City Administrative Code for the years 1995 and 1996.

A small claims hearing was held before Joseph W. Pinto, Jr., Presiding Officer, at the offices of the Division of Tax Appeals, 1740 Broadway, New York, New York, on February 12, 2003 at 1:15 P.M., which date began the three-month period for the issuance of this determination. Petitioners appeared *pro se*. The Division of Taxation appeared by Barbara G. Billett, Esq. (Mac Wyszomirski).

***ISSUES***

I. Whether petitioners' claim for refund of their payment of estimated tax in 1995, intended to be applied in 1996, was properly denied by the Division of Taxation.

II. Whether petitioners are liable for additional personal income tax for the year 1996.

III. Whether petitioners have established reasonable cause for the abatement of the penalties asserted.

***FINDINGS OF FACT***

1. In 1995, petitioner Robert Schneider was self-employed as a commercial lawyer, devoting virtually all of his time to one client. At some point during the year, petitioner learned that his services would no longer be needed.

2. With the prospect of losing his largest client and chief source of income, Mr. Schneider made two estimated tax payments in December of 1995 totaling \$14,000.00. The first payment was made on December 8, 1995 in the sum of \$10,000.00 and the second on December 29, 1995 in the sum of \$4,000.00. The reason for the payments was three-fold: to pay liabilities for 1995 and 1996; to utilize the payment as a forced savings device; and to increase the Federal deduction for state and local taxes paid.

3. Although petitioners paid this \$14,000.00 into their 1995 estimated tax account with the intent that any overpayment of tax in 1995 would be applied to 1996, they did not file their New York State and City of New York personal tax returns for those years until April 17, 2000. That petitioners chose to file at this time was most likely because they had received two letters from the Division of Taxation ("Division") inquiring about their returns for the years 1995, 1996 and 1997.

4. By letter dated December 3, 1999, the Division had informed petitioners that it could not locate returns for them for the years 1995 through 1997, but did acknowledge that it had received a form IT-370 (no year specified), Application for Extension of Time to File for Individuals. The letter also sought specific information with respect to filing requirements and

personal information. After receiving no response to this letter, the Division sent a letter to petitioners, dated February 1, 2000, which repeated its request for the same information.

5. The 1995 return indicated New York adjusted gross income of \$77,623.00, itemized deductions and exemptions of \$21,252.00 and New York State tax on the difference of \$3,701.00 and New York City tax of \$2,144.00. Petitioners claimed \$14,000.00 in estimated payments and an overpayment of \$8,155.00, of which they directed the Division to apply \$8,055.00 to their 1996 estimated tax (with \$100.00 to be used to pay the late filing penalty).

6. The 1996 return reflected the application of the estimated tax payment of \$8,055.00, which amount was carried over from petitioners' 1995 return, and claimed an overpayment of \$4,844.00. Of this amount, petitioners requested a refund of \$3,644.00 and directed the application of \$1,100.00 to their 1997 estimated tax account (with the remaining \$100.00 used to cover the late filing penalty). This return was accompanied by a Federal Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, allowing the return to be filed as late as August 15, 1997. As noted above, the Division acknowledged receiving such an application and Robert Schneider credibly testified he filed the form by the April 15, 1997 deadline.

7. By Notice of Disallowance dated May 19, 2000, the Division disallowed the refund or credit claimed by petitioners on their 1995 return, stating the reason therefor as follows:

The Tax Law does not permit us to allow the refund or credit you claimed on your income tax return for the year(s) 1995. The deadline for filing for a refund or credit expired three years from the date the return was due.

8. The Division then issued a Notice of Deficiency, dated June 26, 2000, which asserted additional New York State and City of New York tax due for the year 1996 in the sum of \$3,211.00, plus penalty and interest, for a total amount due of \$5,600.52. The computations on

the Notice of Deficiency reflect the amounts on petitioners' return and not the estimates made on a previously issued Statement of Proposed Audit Changes, dated April 14, 2000. The tax due was computed without allowing the overpayment from 1995 to be carried over to 1996, but allowing for tax withheld for 1996.

***SUMMARY OF THE PARTIES' POSITIONS***

9. Petitioners acknowledge that their return was filed well beyond the permissible period for filing for a refund for the year 1995. In addition, petitioners acknowledge that their request to have the estimated tax payments made in 1995 applied to 1996 was beyond the time permitted by statute, but contend that they have been harshly penalized by strict adherence to the language of Tax Law § 687(a).

Alternatively, petitioners argue that the Federal statutory provisions have been construed to allow claims for refund or credit beyond the three years (plus extensions) immediately preceding the filing of the return.

Petitioners also argue that even if the statute is strictly construed and their credit application denied, penalties should be abated because their intentions were clear, i.e., that they intended to pay their tax and did in fact cover their liability for 1996, even though they waited too long to have it applied against their liability. Petitioners argue that the Division has been enriched by \$8,055.00, well in excess of their \$3,405.00 tax liability for 1996.

10. The Division of Taxation contends that petitioners' payment of estimated tax in 1995 cannot be used to pay the 1996 tax liability based upon the limitations set forth in Tax Law § 687(a), and therefore, petitioners owe the tax due for 1996, as asserted.

### ***CONCLUSIONS OF LAW***

A. Pursuant to Tax Law § 687(a), a limitations period is imposed upon taxpayers who wish to claim a refund of an overpayment of income tax as follows:

Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later . . . . If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing . . . .

B. Tax Law § 687(e) provides in pertinent part:

No credit or refund shall be allowed or made . . . after the expiration of the applicable period of limitation specified in this article, unless a claim for credit or refund is filed by the taxpayer within such period. Any later credit shall be void and any later refund erroneous. No period of limitation specified in any other law shall apply to the recovery by a taxpayer of moneys paid in respect of taxes paid under this article.

C. In light of the foregoing, a claim for credit or refund of an overpayment of personal income tax must be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever is later.

In this matter, petitioners filed their claim for refund or credit for 1995 with the return filed on April 17, 2000. Therefore, it was within three years of filing the return as prescribed by the statute. However, the limitation on the *amount* of the credit permitted is the tax paid in the three years immediately preceding the filing of the claim plus any extension period, i.e., three years immediately preceding April 17, 2000, or April 17, 1997. It is this second limitation which precludes petitioners from obtaining a refund. That is, all of the tax at issue in this case was paid on December 8, 1995 and December 29, 1995, and deemed to have been paid on April 15, 1996 under Tax Law § 687(i). Accordingly, the *amount* of refund allowable is zero, because no

portion of the overpayment was paid within the three years immediately preceding the filing of the refund claim. Thus, the Division properly denied petitioner's claim pursuant to Tax Law § 687(a).

D. With respect to 1996, since no credit or refund was allowable for 1995, there was no overpayment available to carry over to 1996. Therefore, the only prepayments of tax which could be credited were the withholding payments of State and City tax for which the Division already gave credit when calculating the deficiency for 1996. Accordingly, the tax asserted due by the Division for 1996 was correct.

E. To the extent this interpretation is not consistent with *Lee v. Brady* (93-2 US Tax Cas ¶ 50,487), cited by petitioners, it is noted that the rationale in *Lee* is not the majority holding among the United States District Courts or the United States Court of Appeals. The Court in *Lee* made no attempt to conceal this fact. (*See, Ehle v. U.S.*, 720 F2d 1096 [9<sup>th</sup> Cir 1983] [wherein the Court utilized the same rationale as the one employed herein, i.e., that a taxpayer may obtain by refund only those taxes paid within the three previous years].) Further, the Tax Appeals Tribunal has consistently held that the interpretation employed by the Division was the correct one. (*See, Matter of Durkin*, Tax Appeals Tribunal, October 25, 2001.)

Based on this analysis, the refund claim must be denied and the additional tax asserted on the Notice of Deficiency sustained.

F. The Division of Taxation did not delineate the penalties asserted on the Notice of Deficiency. On the Statement of Proposed Audit Changes it asserted penalties for late filing pursuant to Tax Law § 685(a)(1), negligence penalties pursuant to Tax Law § 685(b)(1) and an amount equal to 50 percent of the interest due on the deficiency attributable to negligence or intentional disregard of the Tax Law pursuant to Tax Law § 685(b)(2).

During the year 1995, petitioner Robert Schneider underwent a devastating change in his life when he lost his primary source of income and support for himself and his family. Although he could easily have used his remaining funds for personal reasons, Mr. Schneider paid the State of New York \$14,000.00 in December of 1995. His intention was to pay his tax liability for 1995 and 1996, create a forced savings plan and receive an additional deduction on his Federal return. The facts reveal that he paid more than twice the \$3,405.00 amount actually due for 1996.

G. The Division in its income tax regulations has promulgated the following catchall provision concerning what constitutes "reasonable cause":

Additional Grounds. Any other cause for delinquency which would appear to a person of ordinary prudence and intelligence as a reasonable cause for delay and which clearly indicates an absence of willful neglect may be determined to be reasonable cause. (20 NYCRR former 107.6[d][4].)

In light of the circumstances herein, petitioners have met their burden of proof in demonstrating reasonable cause for abatement of the penalties imposed and they are canceled. (Tax Law § 685[a].) Petitioners believed that they had complied with the Tax Law when they paid their liability for 1995 in December of 1995, and acted on that belief to their detriment and the Division's benefit. Thus, it is concluded that petitioners acted without negligence or intentional disregard of the Tax Law (Tax Law § 685[b]).

In fact, the Division has profited greatly due to petitioners' good faith effort to do the right thing, and I find that the imposition of penalties in this instance would be grossly inequitable. Clearly, petitioners have been sufficiently penalized by forfeiting over \$8,000.00 to the State of New York. Therefore, all penalties are canceled.

H. The petition of Robert and Denise Schneider is granted to the extent set forth in Conclusion "G" above, but in all other respects is denied; the Division's Notice of Disallowance

dated May 19, 2000 with respect to the 1995 tax year is sustained in full and the Notice of Deficiency, dated June 26, 2000, as modified, is sustained.

DATED: Troy, New York  
April 17, 2003

/s/ Joseph W. Pinto, Jr.  
PRESIDING OFFICER